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No. 91-360

In The

Supreme Court of the United States

October Term, 1991

STATE OF MISSOURI, et al.,

Petitioners,

vs.

KALIMA JENKINS, et al.,

Respondents.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF OF RESPONDENTS KALIMA JENKINS, et al. IN OPPOSITION TO THE PETITION

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QUESTION PRESENTED

Whether post-judgment interest under 28 U.S.C. § 1961 on an attorneys' fees award should accrue from the date of the judgment establishing plaintiffs' entitlement to a statutory fees award and ordering an immediate $200,000 partial payment or from a subsequent judgment that quantifies the fees award in its entirety?

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STATEMENT OF THE CASE

The statement of the case in the petition does not adequately describe either the district court's attorneys' fees judgments or the decision and reasoning of the United States Court of Appeals.

The district court entered two judgments on the underlying attorneys' fees litigation.[1] On February 24, 1986, a judgment was entered which established respondents' entitlement to attorneys' fees, per 42 U.S.C. § 1988, and ordered petitioners to make immediate payment of $200,000 to respondents' lead counsel, Arthur Benson. App. C., Pet. App. A-14. No appeal was taken from this judgment and the ordered interim fees were paid. Respondents' fees award was quantified in its entirety in a judgment entered on May 11, 1987, as modified on July 14, 1987. App. D, Pet. App. A-16. The total Benson fees judgment was $1,729,230; the total NAACP Legal Defense Fund (LDF) fees judgment was $2,365,875. This latter judgment was affirmed in all respects by the Eighth Circuit, *Jenkins v. Missouri*, 838 F.2d 260 (8th Cir. 1988), and by this Court, *Missouri v. Jenkins*, 491 U.S. 274 (1989).

The parties agreed that respondents were entitled to post-judgment interest on their attorneys' fees award under 28 U.S.C. § 1961. The parties disagreed as to

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[1] The final judgment on the merits was entered on June 14, 1985. *Jenkins v. Missouri*, 639 F. Supp. 19 (W.D. Mo. 1985), *aff'd as modified*, 807 F.2d 657 (8th Cir. 1986) (en banc), *cert. denied*, 484 U.S. 816 (1987).

whether interest should accrue from the February 24, 1986 fees judgment or from the May 11, 1987 fees judgment. On February 26, 1990, the district court granted respondents' motion for post-judgment interest on their fees award, with interest accruing from the February 24, 1986 judgment. *Jenkins v. Missouri*, 731 F. Supp. 1437 (W.D. Mo. 1990); App. E, Pet. App. A-33.

The Eighth Circuit affirmed the district court's judgment awarding post-judgment interest, with Chief Judge Lay writing a separate concurrence. *Jenkins v. Missouri*, 931 F.2d 1273 (8th Cir. 1991); App. B, Pet. App. A-3. In construing §1961, the court of appeals followed the lead of the Federal Circuit in *Mathis v. Spears*, 857 F.2d 749 (Fed. Cir. 1988), and adopted the two-part test fashioned by the Fifth Circuit in *Copper Liquor, Inc. v. Adolph Coors Co.*, 701 F.2d 542, 545 (5th Cir. 1983)(en banc)(per curiam), to determine when interest commences to accrue on attorneys' fees awards:

> "If a judgment is rendered that does not mention the right to attorneys' fees, and the prevailing party is unconditionally entitled to such fees by statutory right, interest will accrue from the date of the judgment. If, however, judgment is rendered without mention of attorneys' fees, and the allowance of fees is within the discretion of the court, interest will accrue only from the date the court recognizes the right to such fees in a judgment."

Jenkins v. Missouri, 931 F.2d at 1275-76; App. B, Pet. App. A-7-A-8. The court concluded that the *Copper Liquor* standard stated the correct construction of §1961 and

furthered important public policies. It recognized that awarding interest from the entry of a judgment establishing entitlement to fees compensates prevailing parties for loss of the use of their fees during the balance of the fees litigation and removes any artificial incentive which fees opponents might otherwise have to protract the fees litigation.

> ("The provision for calculating interest from entry of judgment deters use of the appellate process by the judgment debtor solely as a means of prolonging its free use of money owed the judgment creditor"). The award of interest also serves the make-whole obective of the fee awards in civil rights cases. * * * We also observe that if the accrual of post-judgment interest is delayed until fee awards are quantified and attorneys are thus not fully compensated for their successful efforts, they may be reluctant to take on complex and expensive litigation.
>
> The State argues that until the fee award is liquidated, the party responsible for payment has no way to satisfy its obligation, and thus, no interest should accrue. We are not persuaded by this argument. The fee-paying party suffers no prejudice from any delay in quantifying the award because it has the use of the money in the interim and because the statutory interest rate is tied to the U.S. Treasury Bill rate.

Jenkins, 931 F.2d at 1275; App. B, Pet. App. A-9-A-10. The Court concluded that under the second part of the *Copper Liquor* standard,[2] the district court correctly awarded

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[2] In the exercise of billing judgment, respondents did not request post-judgment interest from the date of their June 1985

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respondents post-judgment interest from the February 24, 1986 judgment establishing respondents' entitlement to fees. *Jenkins*, 931 F.2d at 1275; App. B, Pet. App. A-11. Judge John Gibson, who authored both the *en banc* decision on the merits, 807 F.2d 657 (8th Cir. 1986), and the earlier panel decision on attorneys' fees, 838 F.2d 260 (8th Cir. 1988), wrote the Eighth Circuit decision on post-judgment interest from which petitioners seek a writ of certiorari.

REASONS FOR DENYING THE WRIT

I. SUMMARY OF ARGUMENT

It is noteworthy that petitioners make no attempt to explain why this case has national importance worthy of the attention of the United States Supreme Court. In addition, petitioners do not address the reality that the decision below turns on its own facts, and, as a precedent, will affect relatively few other litigants. As a result of the protracted nature of the instant complex class action, the district court entered two fees judgments – one

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merits judgment; however, they have consistently contended that that judgment, which established their entitlement to fees under §1988, satisfied the first prong of the *Copper Liquor* standard for post-judgment interest and provided an alternative basis for affirmance of the district court's judgment. Both the district court and the Eighth Circuit declined to decide whether under the first prong of the *Copper Liquor* standard respondents were entitled to post-judgment interest from their June 14, 1985 merits judgment. *Jenkins*, App. B, Pet. App. A-8 n.2.

which established entitlement to fees and ordered a substantial interim payment, and one which quantified the total fees award and ordered payment thereof. The more typical case awarding attorneys' fees under §1988 does not present an issue as to which fees judgment triggers the accrual of post-judgment interest because there is only one fees judgment, and it both establishes entitlement to and quantifies the fees.

Petitioners contend that certiorari should be granted to resolve a conflict between the Eighth Circuit's decision in the instant case and decisions of the Seventh Circuit in *Fleming v. County of Kane*, 898 F.2d 553 (7th Cir. 1990), and the Ninth Circuit in *Perkins v. Standard Oil Co.*, 487 F.2d 672 (9th Cir. 1973). Petitioners are mistaken. There is no conflict among the circuits as to the date post-judgment interest begins to accrue on statutory awards of attorneys' fees. Notably, neither *Fleming* nor *Perkins* was found by the Eighth Circuit to be in conflict with its decision in the instant case. The Eighth Circuit concluded *Fleming* was inapposite – a decision on pre-judgment interest rather than post-judgment interest. *Jenkins v. Missouri*, App. B, Pet. App. A-7; *see* Part II.B. *infra*. Although post-judgment interest per §1961 was at issue in *Perkins*, the Eighth Circuit found that *Perkins* did not "address the issue before us." *Id.* at A-8 n.3.; *see* Part II.C. *infra*.

Petitioners also contend that this "Court's review of the *Jenkins* case is necessary to reconcile the Eighth Circuit's interpretation of . . . §1961(a) with the principles established in this Court's decision in" *Kaiser Aluminum & Chemical Corp. v. Bonjorno*, 110 S. Ct. 1570 (1990). Cert. Pet. at 6. Petitioners contend that the distinction made in *Bonjorno* between the date of verdict and the date of

judgment, with post-judgment interest held to run from the date of judgment, is comparable to the distinction "between the date that the right to some attorney's fees is recognized and the date the fee award is quantified." *Id.* at 8. The Eighth Circuit found "*Bonjorno* [did] not address the issue before us." *Jenkins*, App. B., Pet. App. A-8 n.3. Petitioners fail to perceive that *Bonjorno* merely confirmed that it is a *judgment* which triggers the accrual of interest per §1961. Consistent with *Bonjorno*, post-judgment interest was awarded from the judgment which established respondents' entitlement to attorneys' fees and ordered immediate payment of $200,000. *See* Part III *infra*.

II. THERE IS NO CONFLICT AMONG THE CIRCUITS

A. The Fifth And Federal Circuit Decisions In *Copper Liquor* And *Mathis*

As discussed preliminarily in the Statement of the Case, the Eighth Circuit in the instant case followed the lead of the Federal Circuit in *Mathis v. Spears*, 857 F.2d 749 (Fed. Cir. 1988), and expressly adopted the test developed by the Fifth Circuit in *Copper Liquor, Inc. v. Adolph Coors Co.*, 701 F.2d 542 (5th Cir. 1983) (en banc). Thus, three circuits now hold that post-judgment interest on attorneys' fees awards accrues either from the date of entry of the judgment on the merits when "the prevailing party is unconditionally entitled to such fees by statutory right," or "from the date the court recognizes the right to such fees in a judgment" when fees are "within the discretion of the court." *Copper Liquor*, 701 F.2d at 545; *Mathis v. Spears*, 857 F.2d at 760.

In *Copper Liquor* post-judgment interest on the fees award was based on the first prong of the alternative standard. Even though the actual amount of fees was not finally resolved until three years later, post-judgment interest was awarded from the district court's merits/fees judgment for legal services performed prior to that judgment, because that judgment first established plaintiffs' entitlement to fees.[3]

In *Mathis v. Spears*, the district court concluded that a patent infringement suit was frivolous and conducted in bad faith, which qualified defendants for an award of attorneys' fees under the "exceptional" case standard of 35 U.S.C. §285. The district court awarded §1961 post-judgment interest on its fees award measured from the date of the judgment on the merits, rather than the date of its subsequent judgment quantifying fees. The

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[3] Like *Bonjorno*, *Copper Liquor* was a suit for damages under the Sherman Act. The jury found Coors liable, but the Fifth Circuit remanded the case for reconsideration of both damages and attorneys' fees. 506 F.2d 934 (5th Cir. 1975). The case was retried and the district court entered a judgment for damages and fees on July 31, 1978. The Fifth Circuit upheld the damages judgment but remanded for reconsideration of fees. 624 F.2d 575 (5th Cir. 1980). The district court entered an amended judgment on fees on June 29, 1981. The Fifth Circuit held that post-judgment interest on the fees award would run from the July 31, 1978 judgment for work performed before that date, because the 1978 judgment on the merits established plaintiffs' entitlement to fees, even though the fees were not finally quantified until 1981. Correctly anticipating *Bonjorno*, *see* Part III, *infra*, the Fifth Circuit did not award post-judgment interest on either damages or fees from the original judgment because it, by virtue of the retrial, was not a legally sufficient judgment.

Federal Circuit upheld the award[4]: "Interest on an attorney fee award thus runs from the date of the judgment establishing the right to the award, not the date of the judgment establishing its quantum." 857 F.2d at 760.

B. The Seventh Circuit Decision in *Fleming*

The Seventh Circuit decision in *Fleming v. County of Kane*, 898 F.2d 553 (7th Cir. 1990), is badly confused.[5] The district court in *Fleming* never discussed the question of post-judgment interest. It never cited 28 U.S.C. §1961. In order to appreciate that *Fleming* presents no §1961 post-judgment interest issue whatsoever, it is necessary to work one's way through the details of the district court's studied effort to award a delay in payment enhancement

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[4] The district court's opinion holding for defendants on the merits also stated the plaintiff's " 'course of conduct demonstrates a recklessness with regard to the truth, which justifies an award of attorneys' fees under the "exceptional case" provision of 35 U.S.C. §285.' 1 USPQ2d at 1523." *Mathis*, 857 F.2d at 751. Although the court of appeals did not explain its application of the *Copper Liquor* alternative standard, this finding of the district court unquestionably established the defendants' entitlement to fees in the judgment on the merits, which, under the second prong of the alternative standard, caused interest to begin to accrue. Without this finding interest would not have commenced with the judgment on the merits, because fees awards to prevailing defendants are not routine, much less unconditional, in patent cases. *Id.* at 754. *See also Revlon, Inc. v. Carson Products Co.*, 803 F.2d 676 (Fed.Cir.), *cert. denied*, 107 S. Ct. 671 (1986); 1 M.Derfner & A.Wolf, *Court Awarded Attorney Fees*, §10.05 [3][b] at 10-60.13 (1988).

[5] The panel was comprised of circuit judges Flaum, Ripple, and Kanne. Judge Kanne authored the opinion.

and the contradictory reasoning of the court of appeals upholding the principle of enhancement but reversing the methodology of its calculation.

The district court did not adjust for the delay in payment by awarding current market rates, as is commonly done. *Fleming v. County of Kane*, 686 F. Supp. 1264, 1272-73 (N.D. Ill. 1988). Instead, the district court made a determination of historic billing rates and then adjusted for delay in payment. The delay in payment adjustment took "the form of adding interest at the prime rate from a date 30 days after the end of the month in which the services were rendered . . . to October 22, 1987." *Id.* at 1274. As the Seventh Circuit observed, October 22, 1987 was "the date on which judgment was entered on the jury's initial verdict as to liability." *Fleming*, 898 F.2d at 565. On June 23, 1988 the district court entered a minute order allowing fees of $205,176.80, final judgment on the fees award was entered on June 24, 1988.

On appeal the Seventh Circuit first held that it was not an abuse of discretion for the district court "to attempt to compensate plaintiff's attorneys for the delay [in payment] by applying an interest rate to the lodestar amount." *Id.* at 564 (footnote omitted).[6] Although the Court held that it could not conclude that use of the prime rate in calculating the delay in payment adjustment was an abuse of discretion, it, nonetheless, remanded to the district court to explain why it selected the prime rate

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[6] Although not cited, the Seventh Circuit's decision was consistent with this Court's ruling in an earlier stage of the fees litigation in the instant case, *Missouri v. Jenkins*, 491 U.S. 274 (1989), which upheld the appropriateness of delay in payment enhancements in §1988 fees awards.

rather than the lower rates for U.S. Treasury Bills or one-year certificates of deposit.[7] *Id.* at 565. Then, in a cursory two paragraphs,[8] the Seventh Circuit proceeded to

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[7] Such a remand would have been unnecessary had the interest calculation been of post-judgment interest under 28 U.S.C. §1961. The district court has no discretion with regard to the post-judgment interest rate. Section 1961 mandates use of the U.S. Treasury Bill rate.

[8] The Seventh Circuit stated:

> In the Memorandum Opinion and Order of April 12th, the district judge directed that interest should be added to the lodestar figure 'from a date 30 days after the end of the month in which the services were rendered' through October 22, 1987, the date on which judgment was entered on the jury's initial verdict as to liability. This application of interest is inappropriate.
>
> As we have noted, 'plaintiffs may collect interest on attorney's fees or costs only from the date that the award was entered.' *Ohio-Sealy [Mattress Mfg. Co. v. Sealy, Inc.*, 776 F.2d 646 (7th Cir. 1985)], at 662. Prior to the date the judgment on attorney's fees was entered, plaintiff's attorneys' claim for unpaid attorney's fees was unliquidated and, as such, not entitled to interest. *Perkins v. Standard Oil Co. of Cal.*, 487 F.2d 672, 675 (9th Cir. 1973); *see also In re Burlington Northern, Inc. Employment Practices Litigation*, 810 F.2d 601, 609 (7th Cir. 1986), cert. denied, 484 U.S. 821, 108 S.Ct. 82, 98 L.Ed.2d 44 (1987) (under 28 U.S.C. §1961(a), the statutory presumption is that interest on money judgments 'shall be calculated from the date of the entry of the judgment'). In this case, the record clearly indicates that the award of attorney's fees was entered on June 24, 1988. Accordingly, interest will be allowed on the amount awarded as attorney's fees only from June 24, 1988 until the date the judgment is paid.

Fleming, 898 F.2d at 565.

instruct the district court that it had erred as to the date at which interest began to accrue in calculating the delay in payment adjustment. *Id.* Citing §1961 caselaw holding that post-judgment interest runs only from entry of a judgment, the Court instructed that the calculation of interest in the delay in payment enhancement would be allowed only from the June 24, 1988 fees judgment.

The Seventh Circuit's discussion on the accrual date of interest was solely in the context of advising the district court how to calculate the delay in payment adjustment on remand. Post-judgment interest on the fees award per §1961 was not even considered by the district court and was not at issue in the *Fleming* appeal. The issue in *Fleming* was the proper calculation of the delay in payment enhancement, which, in distinguishing *Fleming*, the Eighth Circuit characterized as a "pre-judgment interest" issue.[9] *Jenkins*, App. B, Pet. App. A-7. The Eighth Circuit, in deciding the instant case, declined to follow the *Fleming* reasoning, observing that "it is not clear whether the parties [in *Fleming*] presented this [post-judgment interest] issue." *Id.*

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[9] Although commenting that "[t]he *Fleming* result runs counter to the holdings of the Fifth Circuit in *Copper Liquor, Inc. v. Adolph Coors Co.*, 701 F.2d 542 (5th Cir. 1983)(per curiam), and the Federal Circuit in *Mathis v. Spears*, 857 F.2d 749, 760 (Fed. Cir. 1988)," *Jenkins v. Missouri*, App. B, Pet. App. A-7, the Eighth Circuit stated: "The *Fleming* court did not explain why it selected the date of fee quantification rather than the date of fee entitlement, and it is not clear whether the parties presented this issue. *Fleming* reversed the district court's ruling that had awarded pre-judgment interest on the attorney's fees." *Id.* at A-7.

Even under petitioners' mistaken view of *Fleming* (as a decision on post-judgment interest under §1961), *Fleming* is not inconsistent with the Eighth Circuit decision in the instant case. *See Id.* at A-13 n.2 (Lay, C.J., concurring). Although the district court in *Fleming* made an initial ruling that plaintiffs were entitled to attorneys' fees prior to final quantification of the fees, the initial ruling was not entered as a judgment.[10] In *Fleming*, as is typically the case, there was only one judgment on fees. The June 24, 1988 *judgment* which established the *Fleming* plaintiffs' entitlement to fees was also the judgment which quantified the fees. Had the Seventh Circuit been deciding post-judgment interest in *Fleming*, its comment that interest should accrue from the June 24, 1988 judgment would be consistent with *Copper Liquor* and the Eighth Circuit's decision in the instant case because the *Fleming* plaintiffs' entitlement to fees was not established *in a judgment* prior to that date. In the instant case, unlike *Fleming*, the district court's order establishing respondents' entitlement to fees and mandating a partial payment of $200,000 was

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[10] Under the *Copper Liquor* standard, post-judgment interest per §1961 conceivably could have commenced in *Fleming* had the district court's order of April 12, 1988 recognizing plaintiff's entitlement to fees been entered as a judgment requiring payment of a portion of the fees. A judgment, however, was not entered at that time and the court did not address the issue. Chief Judge Lay, in his concurrence in the instant case, concluded that post-judgment interest could not have begun to accrue in *Fleming* prior to the June 24, 1988 fees judgment because "the only reasonable conclusion is that the earlier opinions of the district court were not final judgments under Rule 58." *Jenkins*, App. B, Pet. App. A-13 n.2.

a final judgment and the accrual of post-judgment interest properly commenced upon its entry.

C. The Ninth Circuit Decision in *Perkins*

Contrary to the contention of petitioners, and as recognized by the Eighth Circuit in the instant case, *Perkins* did not address the issue raised by this petition. *Jenkins*, App. B, Pet. App. A-8 n.3. Indeed, close examination of the Ninth Circuit decision in *Perkins* demonstrates that it is consistent with the *Copper Liquor* standard and the decision in the instant case.

In *Perkins v. Standard Oil Co.*, 487 F.2d 672, 673-75 (9th Cir. 1973), the plaintiffs had prevailed in the United States Supreme Court, but its mandate made no reference to attorneys' fees. On remand the district court concluded fees were foreclosed and denied fees. The Supreme Court reversed, holding that the omission of fees from its mandate "left open" the matter of fees for the district court. *Perkins v. Standard Oil Co.*, 399 U.S. 222 (1970). Thereafter the district court awarded fees, which were subsequently reduced on appeal. *Perkins*, 487 F.2d at 674. The Ninth Circuit held that post-judgment interest on the reduced award ran from the date of the district court's fees award, rather than the date of the Supreme Court's earlier judgment on the merits or the date the fees were correctly quantified on appeal. *Id.* at 675-76.

It is clear from the Supreme Court's second ruling in *Perkins* that the award of attorneys' fees was not mandated upon the judgment on the merits (the Supreme

Court's first ruling), but was discretionary with the district court. The plaintiffs' entitlement to fees was, therefore, not established until entry of the district court's subsequent fees judgment. Thus, because the plaintiffs' entitlement to fees was established in the same judgment which quantified the fees, the court in *Perkins* would have had no occasion to consider the issue presented in the instant case.

III. THIS COURT'S DECISION IN *BONJORNO* IS INAPPOSITE

Bonjorno held that post-judgment interest properly ran from the date of entry of the damages judgment, rather than the date of verdict.[11] 110 S. Ct. at 1576.

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[11] The original jury verdict in *Bonjorno*, a suit for damages under the Sherman Act, was on August 21, 1979; judgment was entered for plaintiff Bonjorno on August 22, 1979 for $5,445,000 in damages. Defendant Kaiser filed a motion for new trial. Nearly two years later, the district court concluded there was insufficient evidence to support the damages awarded and granted defendant Kaiser's motion for a new trial on damages only. On December 2, 1981 a limited retrial on damages resulted in a jury verdict of $9,567,000; judgment was entered on that amount on December 4. Thirteen months later, on January 17, 1983, defendant Kaiser's motion for judgment notwithstanding the verdict as to a portion of the damages award was granted and the judgment was reduced by the district court to $4,651,560. Nearly two years later, on December 27, 1984, the Third Circuit reversed and vacated the January 17, 1983 judgment and reinstated and affirmed the December 4, 1981 judgment of $9,567,000.

Thereafter, the district court held that post-judgment interest per 28 U.S.C. §1961 ran from December 2, 1981, the date of

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Bonjorno also held that interest should not run from the 1979 judgment, the damages portion of which the district court found was not supported by the evidence and which was the subject of a new trial. *Id.*

As the Eighth Circuit recognized, *Bonjorno* has no application to the instant case. *Jenkins*, App. B, Pet. App. A-8 n.3. *Bonjorno*'s construction of §1961 to allow interest from the date of the judgment rather than the date of the jury verdict is, of course, inapposite to constitutional litigation conducted without a jury and involving only equitable relief. *Bonjorno's* holding that interest should be calculated from the December 4, 1981 judgment, rather than the original 1979 judgment subsequently vacated by the district court, is inapposite because the underlying judgment in the instant case, the February 24, 1986 fees judgment establishing entitlement to fees and ordering immediate partial payment, was unaltered by subsequent judicial proceedings or appeals.

The decisive consideration in *Bonjorno* was the plain language of §1961, which mandated that "interest [be] calculated from the date of entry of the judgment." In light of this statutory text, and in the absence of legislative history to the contrary, this Court held that interest

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the damages verdict on which the correct judgment would have been entered but for the district court's erroneous partial grant of judgment notwithstanding the verdict. The Third Circuit affirmed the district court's determination that interest should be calculated from December 2, 1981, but reversed the district court's interest determination to the extent it did not utilize the amended version of §1961 effective October 1, 1982.

would accrue only upon entry of the damages judgment even though policy considerations might favor the award of interest from the earlier date of verdict. The statutory text was dispositive. *Bonjorno*, 110 S. Ct. at 1576.

In the instant case the post-judgment interest issue relates to attorneys' fees rather than damages. Petitioners disingenuously assert that "a holding that a party is entitled to attorney's fees is different from a judgment requiring that the party be paid a specific amount of fees." Cert. Pet. at 8. The "holding" to which petitioners allude is contained in the district court's February 24, 1986 *judgment* establishing respondents' entitlement to fees and ordering partial payment. App. C, Pet. App. A-14. Aware that their *Bonjorno* argument crumbles in the face of this judgment, petitioners attempt to avoid acknowledging it. The Eighth Circuit, fully appreciative of *Bonjorno*'s judgment requirement, held that post-judgment interest accrued from the February 24, 1986 judgment.

Bonjorno said absolutely nothing about quantification or liquidation of the amount of the judgment. Indeed, petitioners' liquidation argument has been uniformly rejected in the context of post-judgment interest on damages judgments, the context in which *Bonjorno* was decided. Error as to the dollar value of a damages judgment is routinely held to be a matter of degree which, for purposes of determining the commencement of interest under §1961, does not undermine the basic integrity of the judgment. *E.g., Northern Natural Gas Co. v. Hegler*, 818

F.2d 730 (10th Cir. 1987), *cert. dismissed, Northern Natural Gas Co. v. Mobil Oil Corp.*, 486 U.S. 1063 (1988).[12]

In *Perkins* and *Copper Liquor* it was held that interest ran from the date of the original fees judgment, even though the fees awarded were reduced by the court of appeals in *Perkins* and increased by the court of appeals in *Copper Liquor*. The benchmark for post-judgment interest on the fees award was the date of the judgment establishing the plaintiffs' entitlement to fees, and not the date the final, corrected dollar amount was determined on appeal. In the instant case, respondents' February 1986 fees judgment was never appealed; post-judgment interest necessarily commenced to accrue upon its entry.

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[12] Were quantification or liquidation the key, as petitioners contend, the verdict in *Bonjorno* would have been sufficient to commence the accrual of interest under §1961. Indeed, after all appeals, the final judgment reinstated and affirmed the original jury verdict and judgment.

Bonjorno relied principally upon the Tenth Circuit decision in *FDIC v. Rocket Oil Co.*, 865 F.2d 1158 (10th Cir. 1989). 110 S. Ct. at 1576. The Tenth Circuit held that while *Northern Natural Gas* stated the generally applicable post-judgment interest principles in cases where damages were reversed on appeal, it was not applicable when the appeals court "completely reversed the district court's determination of liability and substantive rights of the parties." *Rocket Oil*, 865 F.2d at 1161.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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